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KING COUNTY
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CASE #: 19-2-05733-5 SEA

The Honorable John R. Ruhl

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

255 SOUTH KING STREET
LIMITED PARTNERSHIP, a
Washington limited partnership; 618
SECOND AVENUE LIMITED
PARTNERSHIP, a Washington limited
partnership; 1000 1st AVENUE
SOUTH LIMITED PARTNERSHIP, a
Washington limited partnership; and
1016 1st AVENUE SOUTH LIMITED
PARTNERSHIP, a Washington limited
partnership,

Plaintiffs,

vs.

CITY OF SEATTLE, a Washington
municipal corporation,

Defendant.

NO. 19-2-05733-5 SEA

**SECOND AMENDED
COMPLAINT FOR
DECLARATORY RELIEF AND
DAMAGES**

COMES NOW the Plaintiffs 255 South King Street Limited Partnership (“255 LP”),
618 Second Avenue Limited Partnership (“618 LP”), 1000 1st Avenue South Limited
Partnership (“1000 LP”), and 1016 1st Avenue South Limited Partnership (“1016 LP”),
(collectively “Plaintiffs”) by and through their attorneys of record, Garth A. Schlemlein, and
Jesse O. Franklin IV, of Schlemlein, Fick, & Scruggs, PLLC, and allege as follows:

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I. INTRODUCTION

This amended complaint arises from the flawed process by which the Defendant City of Seattle (the “City”) created a Waterfront Local Improvement District (“Waterfront LID”) under color of Chapter 35.43 RCW, et seq., City Council Bills 119447, 119448, and 119449, and the passage of City Ordinances 125760, 125761, and 125762. The City has issued an assessment roll and the City intends to issue a final assessment roll to assess properties within the Waterfront LID which “specially benefit” from the Waterfront LID improvements, including assessments to the Plaintiffs’ properties and other properties from T-Mobile Park to Denny Way and from Elliott Bay to I-5, to pay the City collectively \$160 million.

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II. JURISDICTION AND VENUE

2.1 The Court has jurisdiction over the case pursuant to RCW §2.08.010 and §7.24.01.

2.2 Venue is proper in King County, Washington, pursuant to RCW §4.12.010 and §4.12.020.

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III. PARTIES

3.1 Plaintiff 255 LP is a Washington limited partnership and the owner of 255 South King Street, Seattle, Washington.

3.2 Plaintiff 618 LP is a Washington limited partnership and the owner of 618 Second Avenue, Seattle, Washington.

3.3 Plaintiff 1000 LP is a Washington limited partnership and the owner of 1000 1st Avenue South, Seattle, Washington.

3.4 Plaintiff 1016 LP is a Washington limited partnership and the owner of 1016 1st Avenue South, Seattle, Washington.

3.5 Defendant City is a municipal corporation lying in King County, Washington, with its principal place of business at Seattle City Hall, at 600 4th Avenue, Seattle, Washington.

1 3.6 Defendant City is the employer of the offending Mayor, Jenny Durkan, and the
2 offending City Council members at issue, Sally Bagshaw, Lorena Gonzalez, Rob Johnson,
3 Deborah Juarez, Teresa Mosqueda, Kshama Sawant and Mike O'Brien.

4 IV. FACTS

5 4.1 Nearly seven years ago, the Seattle City Council ("City Council") approved a
6 Waterfront Strategic Plan for the area of downtown Seattle stretching for 26 blocks along the
7 City's waterfront. The Waterfront Strategic Plan was approved in 2012 and included a funding
8 plan, which included the framework for a Local Improvement District ("LID") to fund \$200
9 million of the anticipated \$1.3 billion Central Waterfront Improvement Program.

10 4.2 An LID is an assessment program through which the City, through Chapter
11 35.43 RCW, et seq., may impose assessments upon property owners to pay for a project that
12 allegedly will "specially benefit" them. Common LID projects include sewer and water
13 systems. The City may not charge property owners more than the actual value of the special
14 benefit actually received by the assessed properties from the project – called the "Special
15 Benefit." Furthermore, an LID's assessments must be proportional between the properties.

16 4.3 The Special Benefit is defined as the increase in fair market value attributable to
17 the local improvements.

18 4.4 The City has not provided a sufficient list or description of the actual
19 improvements included in the Waterfront LID, e.g., a new public park or just sidewalks and
20 trees adjacent to roadways and arterials to permit property owners in the Waterfront LID to
21 evaluate the alleged improvements.

22 4.5 The Council did not act until May 2018, when it passed a Resolution of Intent to
23 form the Waterfront LID, known as Resolution 31812 (the "Resolution").

24 4.6 The total amount to be assessed against property owners in the Waterfront LID is
25 \$160 million.
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1 4.7 The City arbitrarily and capriciously decided which properties, including the
2 Plaintiffs' properties, would be included or not included within the Waterfront LID.

3 4.8 The City arbitrarily and capriciously decided which properties, including the
4 Plaintiffs' properties, would "Specially Benefit" from the Waterfront LID, even if the properties
5 are blocks away from the Project. The Waterfront LID area stretches from T-Mobile Park to
6 Denny Way and from Elliott Bay to I-5. Numerous properties are several blocks away from the
7 planned improvements. The City did not consider or rely upon any evidence suggesting that
8 these properties would benefit. The City also arbitrarily and capriciously assessed various
9 businesses, like hotels, including the Plaintiffs' hotels, to pay more than other businesses that
10 are in fact closer to the Waterfront LID Project. Additionally, the City did not assess businesses
11 that are currently under construction in the Waterfront LID area – businesses that would
12 otherwise also specially benefit and should be considered subject to the assessment had they
13 been open when the Waterfront LID was established. If a Special Benefit exists, these
14 businesses will undoubtedly benefit as well.

15 4.9 The City, in its decision and notice, failed to distinguish between the general
16 benefits of the Waterfront LID to the public and the Special Benefits, if any, of the Waterfront
17 LID to the Plaintiffs' property and the proper economic valuation of the same.

18 4.10 The City, in its decision and notice, failed to distinguish between the benefits of
19 several projects ongoing within the Waterfront LID, e.g., Viaduct demolition, new
20 Alaskan/Elliott Way surface street, new /improved Seawall, State Route 99 Tunnel, Pier 62
21 rebuild, Bell St. Improvements, and, the 115 parking spaces fronting piers between Pike and
22 Madison, and the Special Benefits, if any, of the Waterfront LID to the Plaintiffs' property and
23 the proper economic valuation of the same.

24 4.11 The City failed to assess other properties located within the Waterfront LID for
25 the Special Benefits, if any, of the Waterfront LID and the proper economic valuation of the
26 same.
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1 4.12 The City failed to assess other properties not located within the Waterfront LID
2 for the Special Benefits, if any, of the Waterfront LID and the proper economic valuation of the
3 same.

4 4.13 Following the Resolution, the City published a preliminary special benefit study
5 – which includes “data and assumptions” determined to calculate a “preliminary special
6 benefit.” In June 2018, the City claims it mailed out letters of their plans to affected property
7 owners and its initial assessment.

8 4.14 Between the dates of July 13-28, 2018, the Seattle Hearing Examiner (the
9 “Hearing Examiner”) held initial hearings and received public comment on the Waterfront LID.

10 4.14.1 Plaintiffs submitted written protests to the Waterfront LID as well as submitted a
11 comment letter to the Hearing Examiner.

12 4.15 After hearing 333 comments on the potential Waterfront LID, the Hearing
13 Examiner published its Report on the hearing.

14 4.16 Per their website, the City Council claims the Waterfront LID formation is a
15 “quasi-judicial process” and thus, the Council and all Councilmembers are forbidden from
16 direct or indirect communication about the Waterfront LID outside of a hearing or meeting, and
17 did in fact tell property owners they could not meet with them.

18 4.17 Mayor Jenny Durkan proclaims this Waterfront LID Project as a “Park for All.”

19 4.18 Defendant City has failed in the past to maintain parks. For example, Victor
20 Steinbrueck Park, also located downtown near the waterfront, is home to many unhoused
21 individuals and is a place for many to use drugs and alcohol and commit other crimes and
22 offenses. Absent evidence that the City will properly keep and maintain the alleged “park,”
23 there is no Special Benefit to the assessed property owners from the park.

24 4.19 On January 25, 2019, the City Council published a public memorandum that
25 admitted to numerous ex-parte communications with parties about the Waterfront LID.
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1 4.20 On January 28, 2019, the City Council passed Ordinance 125760,¹ forming the
2 Waterfront LID, despite clear objections from property owners and requests that City Council
3 members recuse themselves. That same day, Mayor Jenny Durkan signed Ordinance 125760.

4 4.21 On January 28, 2019, the City Council also passed Ordinance 125761 (generally
5 related to funding, operations and management) and Ordinance 125762 (LID protest waiver
6 agreement). That same day, Mayor Jenny Durkan signed Ordinance 125761 and Ordinance
7 125762.

8 4.22 The Waterfront LID Protest Period began on January 28, 2018.

9 4.23 Plaintiffs submitted formal protests and comments to the City in July 2018, and
10 again in January 2019.

11 4.24 Seven City Council members and their staff participated in private meetings with
12 proponents of the Waterfront LID that were not during a public hearing or meeting. These
13 meetings contributed to an effort to achieve a collective positive decision in support of the
14 eventual Waterfront LID, in part, through the exchange of one sided or unreliable information.

15 4.25 Prior to the City Council vote on January 28, 2019, City Council members
16 communicated with each other directly and indirectly about their decisions to approve the
17 Waterfront LID for a reduced amount of \$160 million. These meetings resulted in a collective
18 positive decision in support of the eventual Waterfront LID.

19 4.26 As a result of the City's actions and inactions as outlined above in paragraphs
20 4.1 to 4.23, the City violated Chapter 35.43 RCW, et seq.

21 **V. CAUSES OF ACTION**

22 **5.1 Declaratory Relief - Chapter 35.43 RCW, et seq.**

23 5.1.1 Plaintiffs allege and repeat the preceding paragraphs as though fully set
24 forth herein.

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26 ¹ In its Complaint, filed on Wednesday, February 27, 2019, Plaintiffs' 255 LP and 618
27 LP, misidentified the ordinance number under which the Mayor and the City Council
adopted and passed the Waterfront LID.

1 5.1.2 The City, through its adoption of Ordinance 125760, created a Waterfront
2 Local Improvement District under color of Chapter 35.43 RCW, et seq.

3 5.1.3 The City has assessed properties within the Waterfront LID, including
4 the Plaintiffs' properties, to pay the City collectively \$160 million.

5 5.1.4 The City failed to comply with the requirements of Chapter 35.43 RCW,
6 et seq., as follows:

7 5.1.4.1 The City has not maintained a consistent or sufficient list or
8 description of the actual improvements included in the Waterfront
9 LID, e.g., a new public park or just sidewalks and trees adjacent
10 to roadways and arterials.

11 5.1.4.2 The City arbitrarily and capriciously decided which properties,
12 including the Plaintiffs' properties, would be included or not
13 included within the Waterfront LID.

14 5.1.4.3 The City failed to distinguish between the general benefits of the
15 Waterfront LID to the public generally and the Special Benefits,
16 if any, of the Waterfront LID to the properties assessed within the
17 Waterfront LID, including the Plaintiffs' properties, and the
18 proper economic valuation of the same.

19 5.1.4.4 The City arbitrarily and capriciously decided which properties,
20 including the Plaintiffs' properties, would "specially benefit"
21 from the Waterfront LID.

22 5.1.4.5 The City also arbitrarily and capriciously assessed various
23 businesses, like hotels, including two of the Plaintiffs' properties,
24 to pay more than other businesses that are in fact closer to the
25 Waterfront LID Project, instead of a proportionate assessment as
26 required by law.

1 5.1.4.6 The City failed to assess other properties located within the
2 Waterfront LID for the Special Benefits, if any, of the Waterfront
3 LID and the proper economic valuation of the same

4 5.1.4.7 The City did not assess properties and the businesses located
5 thereon, that are currently under construction, in the Waterfront
6 LID area.

7 5.1.4.8 The City has failed to account for, or otherwise address, the need
8 to maintain any alleged “park” included in the Waterfront LID.

9 5.1.5 Plaintiffs’ rights, status and other legal relationships have been adversely
10 affected by the City’s decision to adopt Ordinance 125760.

11 5.1.6 The City’s actions in adopting Ordinance 125760 in contravention of the
12 intended purpose of Chapter 35.43 RCW, et seq. is a matter of public
13 interest.

14 5.1.7 The public interest will be enhanced by the Court’s review of the City’s
15 actions in adopting Ordinance 125760 under color of Chapter 35.43
16 RCW, et seq.

17 5.1.8 Pursuant to RCW 7.24, Plaintiffs are entitled to have the Court review
18 the controversy and declare the rights, status, and other legal relations of
19 the Plaintiffs in regard to the City’s action. The enactment of Ordinance
20 125760 creates an actual, present, and existing dispute with the City due
21 to the Ordinance’s impact on the Plaintiff’s economic interest and
22 property.

23 5.1.9 Pursuant to RCW 7.24, plaintiff petitions for declaratory judgment that
24 Ordinance 125760 was created in violation of Chapter 35.43 RCW, et
25 seq. and SMC 20.04.
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1 5.1.10 Plaintiffs have been damaged and will be damaged in an amount to be
2 proven at trial.

3 5.1.11 No other remedy is adequate to protect the Plaintiffs' property interests.

4 5.1.12 The City's decisions related to the approval of the Waterfront LID and
5 the adoption of Ordinance 125760 should be invalidated.

6 **5.2 Declaratory Relief – Substantive Due Process**

7 5.2.1 Plaintiffs allege and repeat the preceding paragraphs as though fully set
8 forth herein.

9 5.2.2 Defendant City acting under color of law, subjected, or caused to be
10 subjected, each of the Plaintiffs here to deprivation of rights under the
11 State of Washington ("State") and Federal Constitutions, and laws.

12 5.2.3 The City has acted in an arbitrary and capricious manner without
13 legitimate fact finding or purpose in violation of Plaintiff's rights to
14 substantive due process under both the State and Federal Constitutions.
15 For example only, it is unclear how the Waterfront LID, through the
16 adoption of Ordinance 125760, will actually, specially benefit the
17 properties included in the Waterfront LID, which include the Plaintiffs'
18 properties, (arbitrarily drawn lines and assessed properties, poorly
19 maintained parks in the past – likely to hurt properties more than provide
20 benefits). Moreover, and by way of example only, if any benefit does
21 exist – it is a general benefit for all, not just the property owners included
22 in the Waterfront LID which include the Plaintiffs' properties, which
23 exist blocks away from the Project.

24 5.2.4 Plaintiffs are entitled to have the Court review the controversy and
25 declare the rights, status, and other legal relations of the Plaintiffs in
26 regard to the City's action. The City's actions create an actual, present,
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1 and existing dispute with the City due to the Waterfront LID's impact on
2 the Plaintiff's economic interest and property.

3 5.2.5 The City's conduct constitutes a deprivation of substantive due process.

4 5.2.6 Pursuant to RCW 7.24, plaintiff petitions for declaratory judgment that
5 the City's actions in the creation of the Waterfront LID and the adoption
6 of Ordinance 125760 are a violation of substantive due process.

7 5.2.7 Plaintiffs have been damaged and will be damaged in an amount to be
8 proven at trial.

9 5.2.8 No other remedy is adequate to protect the Plaintiffs' property interests.

10 5.2.9 As a result of the due process violations, the Waterfront LID and the
11 adoption of Ordinance 125760 should be invalidated.

12 **5.3 Declaratory Relief – Procedural Due Process**

13 5.3.1 Plaintiffs allege and repeat the preceding paragraphs as though fully set
14 forth herein.

15 5.3.2 Defendant City acting under color of law, subjected, or caused to be
16 subjected, each of the Plaintiffs here to deprivation of rights under the
17 State and Federal Constitutions and laws.

18 5.3.3 The City's conduct in creating the Waterfront LID and passing Ordinance
19 125760 deprived plaintiffs of their property, economic interest and
20 expectations without notice and an opportunity to be heard.

21 5.3.4 The City's conduct constituted a deprivation of procedural due process
22 without proper notice.

23 5.3.5 Plaintiffs are entitled to have the Court review the controversy and
24 declare the rights, status, and other legal relations of the Plaintiffs in
25 regard to the City's action. The enactment of Ordinance 125760 creates
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1 an actual, present, and existing dispute with the City due to the
2 Ordinance's impact on the Plaintiff's economic interest and property.

3 5.3.6 Pursuant to RCW 7.24, plaintiffs petition for declaratory judgment that
4 Ordinance 125760 was created in violation of procedural due process.

5 5.3.7 Plaintiffs have been damaged and will be damaged in an amount to be
6 proven at trial.

7 5.3.8 No other remedy is adequate to protect the Plaintiffs' property interests.

8 5.3.9 As a result of the due process violations, the City's adoption of
9 Ordinance 125760 should be invalidated.

10 **5.4 Declaratory Relief – Equal Protection Violation**

11 5.4.1 Plaintiffs allege and repeat the preceding paragraphs as though fully set
12 forth herein.

13 5.4.2 Plaintiffs are entitled to have the Court review the controversy and
14 declare the rights, status, and other legal relations of the Plaintiffs in
15 regard to the City's action. The enactment of Ordinance 125760 creates
16 an actual, present, and existing dispute with the City due to the
17 Ordinance's impact on the Plaintiff's economic interest and property.

18 5.4.3 Pursuant to RCW 7.24, plaintiff petitions for declaratory judgment that
19 Ordinance 125760 was created in violation of Plaintiffs' rights to equal
20 protection.

21 5.4.4 No other remedy is adequate to protect the Plaintiffs' property interests.

22 5.4.5 Plaintiffs have been damaged and will be damaged in an amount to be
23 proven at trial.

24 5.4.6 If Ordinance 125760 is not invalidated, then through their conduct, the
25 City treated each of the Plaintiffs' properties and interests differently
26 from other similarly-situated persons and entities without legitimate
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1 purpose in violation of each of the Plaintiffs' rights to equal protection
2 under the law.

3 5.4.7 As a result of the due process violations, the City's adoption of
4 Ordinance 125760 should be invalidated.

5 **5.5 Appearance of Fairness Doctrine Violation**

6 5.5.1 Plaintiffs allege and repeat the preceding paragraphs as though fully set
7 forth herein.

8 5.5.2 The City failed to comply with the Appearance of Fairness Doctrine,
9 RCW Chapter 42.30, and City Council Resolution 31602, in undertaking
10 this quasi-judicial decision affecting the Plaintiffs' properties.

11 5.5.3 The City Council met privately with City staff and other proponents of
12 the Waterfront LID, then failed to recuse themselves from voting, and
13 refused to meet with land owners within the Waterfront LID.

14 5.5.4 These private meetings contributed to an effort to achieve, and did
15 achieve, a collective positive decision in support of the eventual
16 Waterfront LID.

17 5.5.5 The City Council published a public memorandum admitting to
18 numerous ex-parte communications with parties about the Waterfront
19 LID.

20 5.5.6 As a result of the violations of the Appearance of Fairness Doctrine, the
21 City's adoption of Ordinance 125760 should be invalidated.

22 **5.6 Open Public Meetings Act**

23 5.6.1 Plaintiffs allege and repeat the preceding paragraphs as though fully set
24 forth herein.

25 5.6.2 A majority of the City Council communicated with each other directly
26 and indirectly in negotiating a reduced Waterfront LID amount, from
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1 \$200 million to \$160 million, prior to voting and failed to comply with
2 the Open Public Meetings Act, RCW Chapter 42.30, damaging Plaintiffs.

3 5.6.3 A majority of the City Council had knowledge that they were conducting
4 meetings that violated the Open Public Meetings Act.

5 5.6.4 As a result of these violations, the City's decision to adopt Ordinance
6 125760 must be invalidated.

7 **VI. PRAYER FOR RELIEF**

8 Plaintiffs therefore seeks the following relief:

9 A. Declaratory Judgment, declaring, among other things, the Defendant City's
10 actions violated Chapter 35.43 RCW, et seq., Chapter 42.30 RCW, et seq.,
11 and/or the Appearance of Fairness Doctrine, and, as a result, the Defendant
12 City's approval of the Waterfront LID, including the adoption of Ordinance
13 125760, shall be invalidated;

14 B. Injunctive Relief enjoining the Defendant City from assessing any amount to the
15 Plaintiffs' properties for the Waterfront LID;

16 C. Judgment against the Seattle City Council in the form of all relief permitted
17 under RCW 42.30.120;

18 D. Judgment against the Seattle City Council in the form of all relief permitted
19 under Appearance of Fairness Doctrine;

20 E. Direct, Indirect, Consequential and Punitive Damages, if and as allowed by law,
21 in an amount to be proven at trial;

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1 F. Costs and attorneys' fees, and prejudgment interest as allowed by law; and

2 G. Other and further relief as may be deemed just and equitable.

3 DATED this 28th day of March, 2019.

4 SCHLEMLEIN FICK & SCRUGGS, PLLC

5
6 By: /s/ Jesse O. Franklin IV

Jesse O. Franklin IV, WSBA # 13755

7 Garth A. Schlemlein, WSBA # 13637

8 Attorneys for Plaintiffs